

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 201

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EMPLOYEES OF SCHOOL DISTRICTS; AMENDING SECTION 33-1208, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF EDUCATION PROFESSIONAL STANDARDS COMMISSION MAY TAKE CERTAIN ACTIONS ON CERTAIN CERTIFICATES, TO PROVIDE THAT THE STATE BOARD OF EDUCATION PROFESSIONAL STANDARDS COMMISSION SHALL PERMANENTLY REVOKE CERTAIN CERTIFICATES, TO PROVIDE THAT THE STATE BOARD OF EDUCATION PROFESSIONAL STANDARDS COMMISSION MAY INVESTIGATE ANY ALLEGATION OF CERTAIN CONDUCT AND TO PROVIDE THAT THE STATE BOARD OF EDUCATION PROFESSIONAL STANDARDS COMMISSION MAY DENY THE ISSUANCE OF A CERTIFICATE FOR ANY REASON THAT WOULD BE A GROUND FOR REVOCATION OR SUSPENSION; AMENDING SECTION 33-1209, IDAHO CODE, TO REVISE PROCEDURES, PROCESSES AND FEES BEFORE THE PROFESSIONAL STANDARDS COMMISSION, TO DEFINE THE TERM "TEACHER" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1210, IDAHO CODE, TO DEFINE TERMS AND TO PROVIDE FOR AN APPLICANT FOR EMPLOYMENT AT A SCHOOL DISTRICT TO SIGN A RELEASE THAT PRIOR PERSONNEL FILES SHALL BE RELEASED TO THE DISTRICT, TO PROVIDE IMMUNITY FROM LIABILITY AND TO PROVIDE PENALTIES FOR DISCLOSURE OF INFORMATION; AND AMENDING SECTION 33-1211, IDAHO CODE, TO DELETE REFERENCE TO A PREVIOUSLY REPEALED CODE SECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-1208, Idaho Code, be, and the same is hereby amended to read as follows:

33-1208. REVOCATION, SUSPENSION, DENIAL, OR PLACE REASONABLE CONDITIONS ON CERTIFICATE -- GROUNDS. 1. The ~~state board of education professional standards commission~~ may deny, revoke, suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

- a. Gross neglect of duty;
- b. Incompetency;
- c. Breach of the teaching contract;
- d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;
- e. Revocation, suspension, denial or surrender of a certificate in another state for any reason constituting grounds for revocation in this state;
- f. Conviction, finding of guilt, withheld judgment or suspended sentence, in this or any other state of a crime involving moral turpitude;
- g. Conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state for the delivery, manufacture or production of controlled substances or simulated controlled substances as those terms are defined in section 37-2701, Idaho Code;

1 h. A guilty plea or a finding of guilt, notwithstanding the form of the
 2 judgment or withheld judgment in this or any other state, of the crime
 3 of involuntary manslaughter, section 18-4006 2. or section 18-4006 3.,
 4 Idaho Code;

5 i. Any disqualification which would have been sufficient grounds for
 6 refusing to issue or authorize a certificate, if the disqualification
 7 existed or had been known at the time of its issuance or authorization;

8 j. Willful violation of any professional code or standard of ethics or
 9 conduct, adopted by the state board of education;

10 k. The kidnapping of a child, section 18-4503, Idaho Code;

11 l. Conviction, finding of guilt, withheld judgment, or suspended sen-
 12 tence, in this state or any other state of any felony, the commission of
 13 which renders the certificated person unfit to teach or otherwise per-
 14 form the duties of the certificated person's position.

15 2. ~~The state board of education~~ professional standards commission
 16 shall permanently revoke any certificate issued or authorized under the
 17 provisions of section 33-1201, Idaho Code, and shall deny the application
 18 for issuance of a certificate of a person who pleads guilty to or is found
 19 guilty of, notwithstanding the form of the judgment or withheld judgment,
 20 any of the following felony offenses against a child:

21 a. The aggravated assault of a child, section 18-905, Idaho Code, or the
 22 assault with intent to commit a serious felony against a child, section
 23 18-909, Idaho Code.

24 b. The aggravated battery of a child, section 18-907, Idaho Code, or the
 25 battery with intent to commit a serious felony against a child, section
 26 18-911, Idaho Code.

27 c. The injury or death of a child, section 18-1501, Idaho Code.

28 d. The sexual abuse of a child under sixteen (16) years of age, section
 29 18-1506, Idaho Code.

30 e. The ritualized abuse of a child under eighteen (18) years of age,
 31 section 18-1506A, Idaho Code.

32 f. The sexual exploitation of a child, section 18-1507, Idaho Code.

33 g. Possession of photographic representations of sexual conduct in-
 34 volving a child, section 18-1507A, Idaho Code.

35 h. Lewd conduct with a child under the age of sixteen (16) years, sec-
 36 tion 18-1508, Idaho Code.

37 i. The sexual battery of a minor child sixteen (16) or seventeen (17)
 38 years of age, section 18-1508A, Idaho Code.

39 j. The sale or barter of a child for adoption or other purposes, section
 40 18-1511, Idaho Code.

41 k. The murder of a child, section 18-4003, Idaho Code, or the voluntary
 42 manslaughter of a child, section 18-4006 1., Idaho Code.

43 l. The kidnapping of a child, section 18-4502, Idaho Code.

44 m. The importation or exportation of a juvenile for immoral purposes,
 45 section 18-5601, Idaho Code.

46 n. The abduction of a person under eighteen (18) years of age for pros-
 47 titution, section 18-5610, Idaho Code.

48 o. The rape of a child, section 18-6101 or 18-6108, Idaho Code.

49 The general classes of felonies listed in subsection 2. of this section
 50 shall include equivalent laws of federal or other state jurisdictions. For

1 the purpose of this subsection, "child" means a minor or juvenile as defined
2 by the applicable state or federal law.

3 3. The ~~state board of education~~ professional standards commission may
4 investigate and follow the procedures set forth in section 33-1209, Idaho
5 Code, for any allegation of inappropriate conduct as defined in this sec-
6 tion, by a holder of a certificate whether or not the holder has surrendered
7 his certificate without a hearing or failed to renew his certificate. In
8 those cases where the holder of a certificate has surrendered or failed to
9 renew his certificate and it was found that inappropriate conduct occurred,
10 the ~~board~~ commission shall record such findings in the permanent record of
11 the individual and shall deny the issuance of a teaching certificate.

12 4. Any person whose certificate may be or has been revoked, suspended
13 or denied under the provisions of this section shall be afforded a hearing
14 according to the provisions of section 33-1209, Idaho Code.

15 5. The ~~state board~~ professional standards commission may deny the is-
16 suance of a certificate for any reason that would be a ground for revocation
17 or suspension.

18 SECTION 2. That Section 33-1209, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 33-1209. PROCEEDINGS TO REVOKE, SUSPEND, DENY OR PLACE REASONABLE
21 CONDITIONS ON A CERTIFICATE -- LETTERS OF REPRIMAND -- COMPLAINT -- SUBPOENA
22 POWER -- HEARING. (1) The professional standards commission may conduct in-
23 vestigations on any signed allegation of unethical practice of any teacher
24 brought by:

- 25 (a) An individual with a substantial interest in the matter, except a
26 student in an Idaho public school; or
- 27 (b) A local board of trustees.

28 The allegation shall state the specific ground or grounds for revocation,
29 suspension, placing reasonable conditions on the certificate, or issuance
30 of a letter of reprimand. Upon receipt of a written and signed allegation
31 of ethical misconduct, the chief certification officer, in conjunction with
32 the attorney general and the professional standards commission investiga-
33 tor, shall conduct a review of the allegation using established guidelines
34 to determine whether to remand the issue to the school district to be re-
35 solved locally or to open an investigation and forward the case to the pro-
36 fessional standards commission. Within fourteen (14) days of the decision
37 to forward the case, the chief certification officer shall notify the com-
38 plainant and teacher in writing that an investigation will be conducted and
39 the teacher shall be afforded an opportunity to respond to the allegation
40 verbally and in writing prior to the issuance of the complaint. The exec-
41 utive committee of the professional standards commission shall review the
42 circumstances of the forwarded case at one (1) of the two (2) next regularly
43 scheduled meetings, and determine whether probable cause exists to warrant
44 the filing of a complaint and the requesting of a hearing.

45 (2) Proceedings to revoke or suspend any certificate issued under sec-
46 tion 33-1201, Idaho Code, or to issue a letter of reprimand or place reason-
47 able conditions on the certificate shall be commenced by a written complaint
48 against the holder thereof. Such complaint shall be made by the chief certi-
49 fication officer stating the ground or grounds for issuing a letter of rep-

1 rimand, placing reasonable conditions on the certificate, or for revocation
 2 or suspension and proposing that a letter of reprimand be issued, reason-
 3 able conditions be placed on the certificate, or the certificate be revoked
 4 or suspended. A copy of the complaint shall be served upon the certificate
 5 holder, either by personal service or by certified mail, within thirty (30)
 6 days of determination by the executive committee or such other time agreed to
 7 by the teacher and the chief certification officer.

8 (3) Not more than thirty (30) days after the date of service of any
 9 complaint, the person complained against may request, in writing, a hearing
 10 upon the complaint. Any such request shall be made and addressed to the state
 11 superintendent of public instruction; and if no request for hearing is made,
 12 the grounds for suspension, revocation, placing reasonable conditions on
 13 the certificate, or issuing a letter of reprimand stated in the complaint
 14 shall be deemed admitted. Upon a request for hearing, the chief certifica-
 15 tion officer, shall give notice, in writing, to the person requesting the
 16 hearing, which notice shall state the time and place of the hearing and which
 17 shall occur not more than ninety (90) days from the request for hearing or
 18 such other time agreed to by the teacher and the chief certification officer.
 19 The time of such hearing shall not be less than five (5) days from the date of
 20 notice thereof. Any such hearing shall be informal and shall conform with
 21 chapter 52, title 67, Idaho Code. The hearing will be held within the school
 22 district in which any teacher complained of shall teach, or at such other
 23 place deemed most convenient for all parties.

24 (4) Any such hearing shall be conducted by three (3) or more panel mem-
 25 bers appointed by the chairman of the professional standards commission, a
 26 majority of whom shall hold a position of employment the same as the person
 27 complained against. One (1) of the panel members shall serve as the panel
 28 chair. The panel chair shall be selected by the chairman of the professional
 29 standards commission from a list of former members of the professional stan-
 30 dards commission who shall be instructed in conducting administrative hear-
 31 ings. No commission member who participated in the probable cause determi-
 32 nation process in a given case shall serve on the hearing panel. All hear-
 33 ings shall be held with the object of ascertaining the truth. Any person com-
 34 plained against may appear in person and may be represented by legal counsel,
 35 and may produce, examine and cross-examine witnesses, and, if he chooses to
 36 do so, may submit for the consideration of the hearing panel a statement, in
 37 writing, in lieu of oral testimony, but any such statement shall be under
 38 oath and the affiant shall be subject to cross-examination.

39 (5) The state superintendent of public instruction, as authorized by
 40 the state board of education, has the power to issue subpoenas and compel
 41 the attendance of witnesses and compel the production of pertinent papers,
 42 books, documents, records, accounts and testimony. The state board or its
 43 authorized representative may, if a witness refuses to attend or testify or
 44 to produce any papers required by such subpoena, report to the district court
 45 in and for the county in which the proceeding is pending, by petition, set-
 46 ting forth that a due notice has been given of the time and place of atten-
 47 dance of the witnesses, or the production of the papers, that the witness has
 48 been properly summoned, and that the witness has failed and refused to at-
 49 tend or produce the papers required by this subpoena before the board, or its
 50 representative, or has refused to answer questions propounded to him in the

1 course of the proceedings, and ask for an order of the court compelling the
 2 witness to attend and testify and produce the papers before the board. The
 3 court, upon the petition of the board, shall enter an order directing the
 4 witness to appear before the court at a time and place to be fixed by the court
 5 in the order, the time to be not more than ten (10) days from the date of the
 6 order, and then and there shall show cause why he has not attended and testi-
 7 fied or produced the papers before the board or its representative. A copy of
 8 the order shall be served upon the witness. If it shall appear to the court
 9 that the subpoena was regularly issued by the board and regularly served, the
 10 court shall thereupon order that the witness appear before the board at the
 11 time and place fixed in the order and testify or produce the required papers.
 12 Upon failure to obey the order, the witness shall be dealt with for contempt
 13 of court. The subpoenas shall be served and witness fees and mileage paid as
 14 allowed in civil cases in the district courts of this state.

15 (6) ~~At~~ Within twenty-one (21) days of the conclusion of any hearing
 16 dealing with the revocation, suspension, denial of a certificate, placing
 17 reasonable conditions on the certificate, or issuing a letter of reprimand,
 18 the hearing panel shall submit to the chief certification officer, and to the
 19 person complained against a concise statement of the proceedings, a summary
 20 of the testimony, and any documentary evidence offered, together with the
 21 findings of fact and a decision. The hearing panel may determine to suspend
 22 or revoke the certificate, or the panel may order that reasonable conditions
 23 be placed on the certificate or a letter of reprimand be sent to the certifi-
 24 cate holder, or if there are not sufficient grounds, the allegation against
 25 the certificate holder is dismissed and is so recorded.

26 (7) Within three (3) days of issuance, t~~The hearing panel's decision~~
 27 ~~shall be given to the person complained against and a copy of the panel's~~
 28 ~~decision shall be made a permanent part of the record of the certificate~~
 29 ~~holder.~~

30 (8) The final decision of the ~~professional standards commission~~
 31 hearing panel shall be subject to judicial review in accordance with the
 32 provisions of chapter 52, title 67, Idaho Code, in the district court of the
 33 county in which the holder of a revoked certificate has been last employed as
 34 a teacher.

35 (9) Whenever any certificate has been revoked, suspended or has had
 36 reasonable conditions placed upon it, or an application has been denied, the
 37 professional standards commission may, upon a clear showing that the cause
 38 constituting grounds for the listed actions no longer exists, issue a valid
 39 certificate. Provided however, that no certificate shall be issued to any
 40 person who has been convicted of any crime listed in subsection 2. of section
 41 33-1208, Idaho Code.

42 (10) For any person certified in another state and applying for certifi-
 43 cation in Idaho, and for any person previously certified in this state who is
 44 applying for certification in the event their certification has lapsed or is
 45 seeking renewal of a current certification, the chief certification officer
 46 shall deny an application for a new certificate or for a renewal of a cer-
 47 tificate, regardless of the jurisdiction where such certificate was issued,
 48 if there are any unsatisfied conditions on such current or previously is-
 49 sued certificate or if there is any form of pending investigation by a state
 50 agency concerning the applicant's teaching license or certificate. Pro-

vided however, the chief certification officer shall not automatically deny the application if such person authorized in writing that the chief certification officer and the professional standards commission shall have full access to the investigative files concerning the conditions on, or investigation concerning, such certificate in Idaho or any other state or province. Upon review of the information authorized for release by the applicant, the chief certification officer shall either grant or deny such application or, upon denial and upon written request made by the applicant within thirty (30) days of such denial, shall afford the applicant with the procedures set forth in subsections (3) through (9) of this section. If the applicant does not execute the written authorization discussed herein, reapplication may be made once all investigations have been completed and all conditions have been satisfied, resulting in a clear certificate from the issuing state or province.

(11) For the purposes of this section, the term "teacher" shall include any individual required to hold a certificate pursuant to section 33-1201, Idaho Code.

SECTION 3. That Chapter 12, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-1210, Idaho Code, and to read as follows:

33-1210. INFORMATION ON PAST JOB PERFORMANCE. (1) As used in this section:

(a) "Applicant" means an applicant for employment in a certificated or noncertificated position who is currently or was previously employed by a school district.

(b) "Employer" means a school district employer.

(2) Before hiring an applicant, a school district shall request the applicant to sign a statement:

(a) Authorizing the applicant's current and past employers, including employers outside of the state of Idaho, to release to the hiring school district all information relating to the job performance and/or job related conduct, if any, of the applicant and making available to the hiring school district copies of all documents in the previous employer's personnel, investigative or other files relating to the job performance by the applicant; and

(b) Releasing the applicant's current and past employers, and employees acting on behalf of that employer, from any liability for providing information described in paragraph (a) of this subsection, as provided in subsection (4) of this section.

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past employers, including out-of-state employers, to provide the information described in subsection (2) (a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

(4) Not later than twenty (20) business days after receiving a request under subsection (3) of this section, a school district within Idaho shall provide the information requested and make available to the requesting school district copies of all documents in the applicant's personnel record

1 relating to job performance. The school district, or an employee acting on
2 behalf of the school district, who in good faith discloses information under
3 this section either in writing, printed material, electronic material or
4 orally is immune from civil liability for the disclosure. An employer is
5 presumed to be acting in good faith at the time of the disclosure under this
6 section unless the evidence establishes one (1) or more of the following:
7 (a) that the employer knew the information disclosed was false or mislead-
8 ing; (b) that the employer disclosed the information with reckless disregard
9 for the truth; (c) that the disclosure was specifically prohibited by a state
10 or federal statute.

11 (5) A hiring district shall request from the office of the superinten-
12 dent of public instruction verification of certification status, any past
13 or pending violations of the professional code of ethics, and information
14 relating to job performance as established by the provisions of subsection
15 (11) of this section, if any, for applicants for certificated employment.

16 (6) A school district shall not hire an applicant who does not sign the
17 statement described in subsection (2) of this section.

18 (7) School districts may employ applicants on a conditional basis pend-
19 ing the district's review of information obtained under this section. When
20 requests are sent to out-of-state employers under subsection (3) of this
21 section, an applicant who has signed the statement described in subsection
22 (2) of this section shall not be prevented from gaining employment in Idaho
23 public schools if the laws or policies of that other state prevent documents
24 from being made available to Idaho school districts or if the out-of-state
25 school district fails or refuses to cooperate with the request.

26 (8) Information received pursuant to this section shall be used by a
27 school district only for the purpose of evaluating an applicant's qualifica-
28 tions for employment in the position for which he or she has applied. Except
29 as otherwise provided by law, a board member or employee of a school district
30 shall not disclose the information to any person, other than the applicant,
31 who is not directly involved in the process of evaluating the applicant's
32 qualifications for employment. A person who violates the provisions of this
33 subsection may be civilly liable for damages caused by such violation.

34 (9) Beginning September 1, 2011, the board or an official of a school
35 district shall not enter into a collective bargaining agreement, individ-
36 ual employment contract, resignation agreement, severance agreement, or any
37 other contract or agreement that has the effect of suppressing information
38 about negative job performance by a present or former employee or of expung-
39 ing information about that performance or misconduct from any documents in
40 the previous employer's personnel, investigative or other files relating to
41 job performance by the applicant. Any provision of a contract or agreement
42 that is contrary to this subsection is void and unenforceable. This subsec-
43 tion does not restrict the expungement from a personnel file of information
44 about alleged verbal or physical abuse or sexual misconduct that has not been
45 substantiated.

46 (10) This section does not prevent a school district from requesting or
47 requiring an applicant to provide information other than that described in
48 this section.

49 (11) By September 1, 2011, the state board of education has the author-
50 ity to and shall adopt rules defining job standards performance and "verbal

1 abuse," "physical abuse" and "sexual misconduct" as used in this section for
2 application to all certificated and noncertificated employees. The defi-
3 nitions of job standards performance, verbal and physical abuse and sexual
4 misconduct adopted by the state board of education must include the require-
5 ment that the school district has made a determination that there is suffi-
6 cient information to conclude that the abuse or misconduct occurred and that
7 the abuse or misconduct resulted in the employee's leaving his or her posi-
8 tion at the school district.

9 SECTION 4. That Section 33-1211, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 33-1211. PRIVILEGED COMMUNICATION OR PUBLICATION. Any publication or
12 communication made by any member of the state board of education, or by any
13 person delegated by the said state board to hold or conduct any hearing, or
14 by any certification officer of the state board of education, in the proper
15 discharge of any official duty imposed under sections 33-1208, or 33-1209,
16 ~~or 33-1210~~, Idaho Code, shall be subject to disclosure according to chapter
17 3, title 9, Idaho Code.